SIZE APPEAL OF:

West Texas Power Company, SBA No. SIZ-5539

Appellant, Decided: March 13, 2014

Appealed From
Size Determination No. 05-2013-070

ORDER DISMISSING APPEAL

I. Background

On July 30, 2012, the U.S. Army Corps of Engineers issued Request for Proposals (RFP) No. W912DY-11-R-0036 seeking contractors to provide locally-generated renewable and alternative energy at military installations. The RFP contemplated award of multiple Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts. Although the RFP was unrestricted, certain task orders would be reserved for small businesses.

The Contracting Officer (CO) assigned North American Industry Classification System (NAICS) code 221119, Other Electric Power Generation. At the time the RFP was issued, applicable regulations stated that “[a] firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.” 13 C.F.R. § 121.201 n.1 (2012).

On September 9, 2013, the CO announced that West Texas Power Company (Appellant) was among a group of 17 firms selected for wind technology awards. On September 12, 2013, an unsuccessful offeror, Pacific Power, LLC (Pacific Power), protested Appellant's small business status. The CO forwarded the protest to the U.S. Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office) for review. Because the procurement was unrestricted and Pacific Power had been eliminated for reasons unrelated to size, it appeared Pacific Power might not have standing to initiate a protest against Appellant. Therefore, the Area Office adopted Pacific Power's protest.

On November 14, 2013, the Area Office issued Size Determination No. 05-2013-070 concluding that Appellant is not an eligible small business. Appellant states that it received the size determination the next day. (Appeal at 1.)

On March 5, 2014, SBA's Office of Hearings and Appeals (OHA) received the instant appeal. Because the appeal appeared to have been submitted more than fifteen days after Appellant's receipt of the size determination, OHA ordered Appellant to show cause, by March 12, 2014, why the appeal should not be dismissed as untimely. Appellant did not respond to the order.

II. Discussion

The instant appeal is untimely and must be dismissed. In accordance with 13 C.F.R. § 134.304(a), a size appeal must be filed at OHA within fifteen days of receipt of the size determination. Here, Appellant received the size determination on November 15, 2013. Fifteen days from that date was November 30, 2013. Because November 30, 2013 was a Saturday, the appeal petition was due on the next business day: Monday, December 2, 2013. 13 C.F.R. § 134.202(d). The appeal petition was filed with OHA on March 5, 2014, more than three months after the filing deadline, and thus is plainly untimely. OHA has no discretion to extend, or waive, the deadline for filing an appeal. Id. §§ 134.202(d)(2)(i)(A), 134.304(c); Size Appeal of Autonomic Resources, LLC, SBA No. SIZ-5453 (2013).

For the above reasons, I DISMISS the instant appeal as untimely. This is the final decision of the Small Business Administration. See 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge